

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-08-2006

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

C.R.P.PD.Nos.1006 & 1007 OF 2006

1.G.Gnana Raja Pushpam
2.V.Gnanamani
3.G.Joseph Rajkumar
4.G.Prescilla Jothi Priya ... Petitioners in both CRPs.

-vs-

1.V.Chandraprakash
2.M/s.Murray & Co.,
Govt.Auctioneers & Estate Agents ... Respondents in
CRP.PD.No.1006/2006

1.V.Sripal
2.M/s.Murray & Co.,
Govt.Auctioneers & Estate Agents ... Respondents in
CRP.PD.No.1007/2006

Revisions filed under Article 227 of the Constitution of India against the orders, dated 13.06.2006, made in I.A.No.21374 of 2005 in O.S.No.6450 of 2004 and I.A.No.21375 of 2005 in O.S.No.6451 of 2004 respectively on the file of XIII Assistant Judge, City Civil Court, Chennai.

For petitioners : Mr.S.Subbiah

For respondents : M/s.Saikrishnan,Sai,Bharath & Ilan

O R D E R

Petitioners are the plaintiffs. They filed two suits viz., O.S.Nos.6450 and 6451 of 2004 for permanent injunction, restraining the respondents/defendants, from bringing the suit schedule property in a public auction.

2. The suit property belongs to the first petitioner, who executed two mortgage deeds in favour of the defendants and obtained a loan of about Rs.10,50,000/-. Since the amount was not paid in time, the property was brought in public auction. Therefore, the petitioners filed two suits and obtained interim injunction, subject to payment of Rs.2,00,000/- and Rs.1,50,000/- respectively. The

petitioners complied with the said order and thereby paid the entire dues payable to the respondents. Therefore, they filed the applications in question, namely, I.A.Nos.21374 and 21375 of 2005 in the suits, to amend the plaint, seeking for the relief of redemption of mortgage.

3. The applications were contested by the respondents, on the ground that the applications were filed while P.W.1 was in box during the course of cross-examination, in order to delay the suit proceedings and, further, the amendment sought for would prejudice the interest of the defendants, thereby causing miscarriage of justice.

4. Accepting the objection raised by the respondents, the trial Court dismissed both the applications. Hence, these revisions.

5. Learned counsel for the petitioners, on the strength of *Pradeep Singhvi v. Heero Dhankani*, 2004 (13) Supreme Court Cases 432; *Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vaisya Madam v. Udumalpet Samayapuram Ayira Vaisya Sangam*, 2005 (4) CTC 664 and *Rajesh Kumar Aggarwal v. K.K.Modi*, 2006 (4) Supreme Court Cases 385, would contend that the trial Court ought to have exercised its discretion to allow the applications, as it would prevent the multiplicity of proceedings, especially when the entire dues have been paid.

6. On the other hand, it is contended by the learned counsel for the respondents/caveators, on the strength of *Ahmed Meeran, S. v. S.Kumaraswamy*, 2006 (1) CTC 55, that the petitioners having chosen to file the suits for permanent injunction and allowed the issues to be framed on the basis of the pleadings made by both the parties and also filed applications for the amendment after the trial has commenced that too when P.W.1 is in box for cross-examination, if the petitions are allowed, it will amount to allowing the new cause of action, which will be a miscarriage of justice.

7. I have heard the learned counsel for the parties.

8. A perusal of the order impugned would make it clear that the applications for amendment are not only belated, but also the prayer sought for in the amendment would change the cause of action.

9. It is a settled law that when the structure of the case is sought to be changed, the same should not be allowed.

10. Therefore, these Civil Revision Petitions are dismissed, as devoid of merit. No costs. Consequently, the connected M.P.Nos.1 of 2006 are also dismissed.

Dixit

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The XIII Assistant Judge,
City Civil Court, Madras.

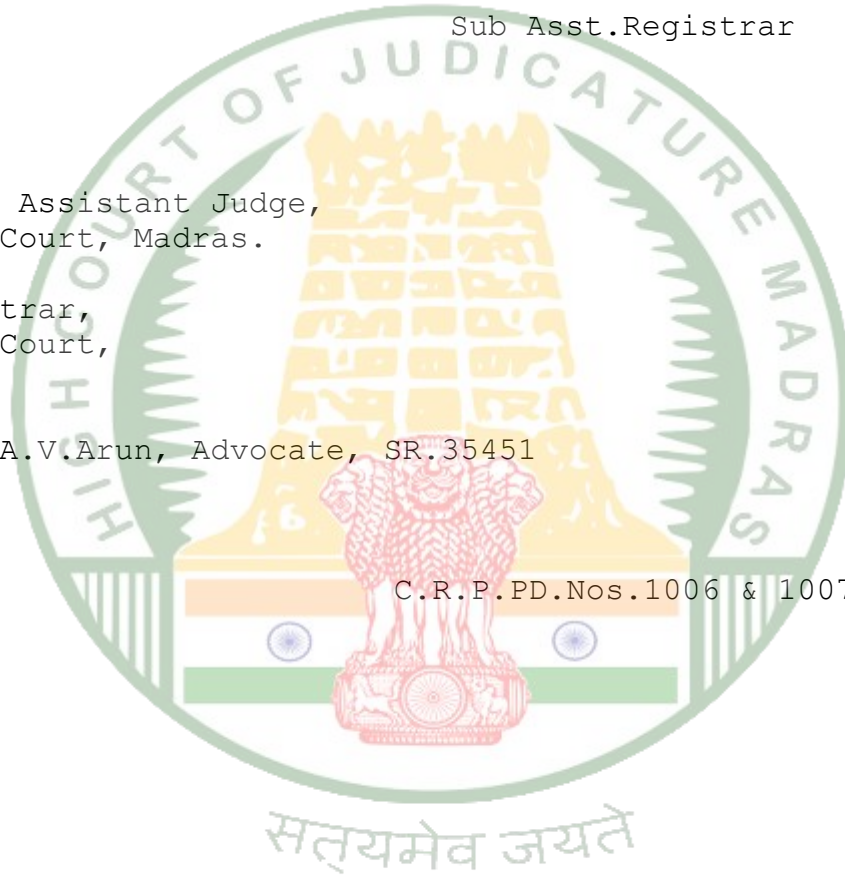
2.The Registrar,
City Civil Court,
Chennai.

1 cc to Mr.A.V.Arun, Advocate, SR.35451

vc (co)

dv/6.9.06

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